

ECF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERIT CAPITAL GROUP, LLC,

Plaintiff,

-against-

TRIO INDUSTRIES MANAGEMENT, LLC, TRIO
INDUSTRIES HOLDINGS, LLC, EVAN R.
DANIELS and ROBERT E. GYEMANT,

Defendants.

TRIO INDUSTRIES MANAGEMENT, LLC and
TRIO INDUSTRIES HOLDINGS, LLC,

Third Party Plaintiffs,

-against-

HARVEY M. BLOCH, ALFRED SALAZAR and
THOMAS J. MANCUSO,

Third Party Defendants.

MEMO ENDORSED

Ex No. 04 CV 7690 (RCC)

DECLARATION IN SUPPORT OF
TRIO DEFENDANTS'
APPLICATION TO SUBSTITUTE
COUNSEL

JUDGE RICHARD C. CASEY

DAVID S. FRYDMAN declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the following statements are true and correct:

1. I am the managing member of Frydman LLC, incoming counsel for defendants Trio Industries Management, LLC, Trio Industries Holdings, LLC and Robert E. Gyemant (collectively, the "Trio Defendants"). I submit this affidavit, pursuant to Local Rule 1.4, in support of the Trio Defendants' request that my firm be substituted as counsel for Shustak, Jalil & Heller, the Trio Defendants' out-going counsel. A copy of the Trio Defendants' consent to change attorneys is annexed hereto as Exhibit A.

2. I understand the change of attorneys has been occasioned by the Shustak firm's motion to withdraw as counsel for defendants because a conflict has arisen between the defendants. Defendants Daniels and Gyemant were co-officers of the Trio companies until Mr. Daniels left. Mr. Gyemant stayed with Trio. An apparent conflict has arisen between Mr. Daniels on the one hand, and Mr. Gyemant and the Trio entities, on the other hand. My firm, accordingly, can substitute for all defendants other than Mr. Daniels. Mr. Daniels will need to secure his own counsel.

3. I understand that the discovery period is concluded. At a January 20, 2006 conference, the Court directed all counsel and Mr. Daniels (personally or through new counsel) to appear on February 10.


CONCLUSION

4. For the reasons set forth above, the Court is respectfully requested to "So-Order" the Original consent to change attorney that accompanies this declaration.
Declared January 25, 2006



DAVID S. FRYDMAN (DF-8095)

Application granted.
So ordered.


January 26, 2006